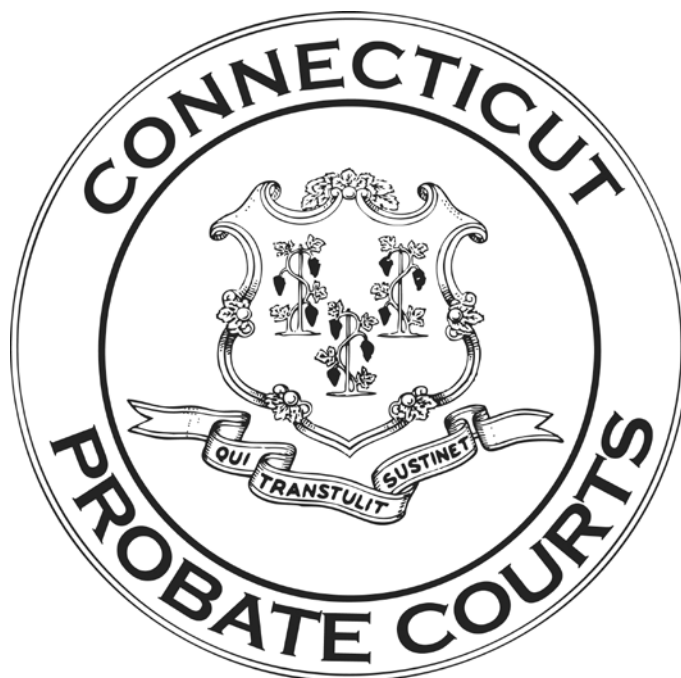


PROBATE COURT USER GUIDE

PERSONS WITH INTELLECTUAL DISABILITY



PUBLISHED BY
OFFICE OF THE
PROBATE COURT ADMINISTRATOR
STATE OF CONNECTICUT

COMPLIMENTS OF YOUR LOCAL PROBATE COURT

INTRODUCTION

Among the laws within the jurisdiction of the Connecticut Probate Courts are those with respect to guardianship, sterilization, and involuntary placement of persons with intellectual disability.

This user guide explains the basic aspects of this complex body of laws. It is not a complete review of the subject, but a guide to help those with commonly asked questions.

Your local Probate Court would be happy to assist you with specific procedural questions. For questions or problems related to substantive matters, competent professional advice should be sought.

Application forms for procedures involving persons with intellectual disability and other probate matters are available online at www.ctprobate.gov. Click on "Probate Court Forms." Forms are also available at the Probate Courts.

GUARDIANSHIP OF PERSONS WITH INTELLECTUAL DISABILITY

Every person in the State of Connecticut who is 18 years of age or older is considered to be an adult — that is, legally capable of directing his or her personal and financial affairs. Persons with intellectual disability, however, may be partially or totally unable to meet essential requirements for their physical health or safety and/or unable to make informed decisions about matters related to their care. In such cases, the Probate Court is authorized to appoint a guardian to supervise all aspects or certain aspects of the care of an adult with intellectual disability. It must be noted that the levels of intellectual disability range from mild to profound, and a court-appointed guardian is **not** necessary for all adults with intellectual disability.

What Is Intellectual Disability?

“Intellectual disability” is defined by statute as a significant limitation in intellectual functioning and deficits in adaptive behavior that originated during the developmental period before eighteen years of age. A “significant limitation in intellectual functioning” is defined as an intelligence quotient (“IQ”) more than two standard deviations below the mean, as measured by standard tests of general intellectual functioning. This means that the person’s IQ must be 69 or less.

The court can appoint a guardian only if it finds that the person has intellectual disability in accordance with this statutory definition. Not everyone with a developmental disability will fall within this definition. For example, a person on the autism spectrum may have an intelligence quotient above the statutory standard for “intellectual disability.” While a guardian could not be appointed for a person whose IQ is higher than 69, other avenues might be available to assist the person. The appointment of a conservator, for example, could provide an appropriate alternative. For further information about conservatorship, please see the *Probate Court User Guide for Conservators*, available at www.ctprobate.gov and the local Probate Court.

Who Can Be a Guardian of an Adult with Intellectual Disability and How is a Guardian Appointed?

Any adult person, legally authorized state official, or private nonprofit corporation may be appointed guardian of an adult with intellectual disability. Hospitals and nursing homes, however, are not permitted to be appointed such guardians.

Any adult person may file an Application/Guardianship of Person with Intellectual Disability (form PC-700). **Please note:** If a parent or guardian anticipates that a minor child will require a guardian upon attaining the age of 18, the parent or guardian may file a petition for guardianship of a minor child up to 180 days before his or her eighteenth birthday. The court may grant the petition, provided the order shall take effect no earlier than the date the child turns 18.

The petitioner must allege that the person with intellectual disability (referred to as the “respondent”) is totally or partially unable to meet essential requirements for his or her physical health and safety and/or is unable to make informed decisions about matters relating to his or her care because of the severity of his or her intellectual disability. The petition must be filed in the Probate Court in the district in which the respondent resides or has his or her domicile. There is a \$150 filing fee to be paid by the petitioner at the time the petition is filed in the Probate Court, unless the fee is waived due to financial need. The petition must state:

- (1) Whether or not the respondent already has a guardian;
- (2) The extent of the respondent's deficiencies;
- (3) Other facts relevant to the petition; and
- (4) Those specific areas of protection and assistance required by the respondent if a limited guardianship is sought.

What Notice Is Required?

The law requires that a court hearing be set within 45 days of the filing of the petition. The respondent will be personally notified of the time and place of the hearing at least seven days before it is held. The notice must inform the respondent of:

- (1) The type of guardianship being sought and its legal consequences;
- (2) The facts described in the petition;
- (3) The specific limitations on the guardian's authority if a limited guardianship is being sought; and
- (4) The respondent's right to legal counsel. If the respondent cannot afford to pay for an attorney, one will be appointed without charge.

Other interested persons will also be notified of the hearing.

Where Will the Hearing Be Held?

Usually, the hearing is held at the Probate Court in the district where the respondent resides or is domiciled. The respondent **must** be present at the hearing, however, and the hearing may be held at another site, such as a group home or training school, if that would better insure the respondent's appearance.

What Is Required at the Hearing?

A Department of Developmental Services (DDS) assessment team must complete an Assessment Team Evaluation: Guardianship of Person with Intellectual Disability (form PC-770) in the 45 days preceding the hearing. This three-member team representing appropriate disciplines within DDS will provide the court with a determination whether the respondent has intellectual disability and, if so, the severity of the condition. The evaluation will also provide information regarding the specific areas, if any, in which he or she requires the supervision and protection of a guardian. If the court is not satisfied with the report, it may be returned with a request for more specific information. Pursuant to C.G.S. section 45a-132a, the court may order the examination of the respondent by a physician, psychiatrist, or psychologist. The cost of such an examination will be assessed against the petitioner, the respondent or the party requesting the exam. If the party is unable to pay for the examination, the Probate Court Administration Fund will make payment.

At the hearing, the court will hear evidence concerning the respondent's condition. The DDS assessment team members may be asked to testify. If the petitioner or the respondent's attorney wishes the assessment team members to testify, he or she must make this request at least three days before the hearing. The respondent may also be allowed to participate if his or her condition permits. If the respondent is on medication at the time, the court should be informed of this fact. The court may want to hear additional evidence from relatives, friends, social workers, or physicians who can often provide valuable information about the respondent's needs and capabilities.

When Is a Guardian Appointed?

The court must find by clear and convincing evidence that the respondent has intellectual disability and is totally or partially unable to meet essential requirements for his or her physical health or safety and totally or partially unable to make informed decisions about matters relating to his or her care. Any alleged inability of the respondent must be evidenced by **recent** behavior that would cause harm or create a risk of harm. Having satisfied these requirements, the court may appoint:

- (1) A **plenary guardian** of an adult with intellectual disability. This is a person, legally authorized state official, or private, nonprofit corporation appointed by a Probate Court to supervise all aspects of the care of an adult person who, by reason of the severity of his or her intellectual disability, is “**totally** unable to meet essential requirements for his or her physical health or safety” and “**totally** unable to make informed decisions about matters related to his or her care.”

OR

- (2) A **limited guardian** of an adult with intellectual disability. This position is the same in all respects as that of a plenary guardian, **except that** a

limited guardian supervises only certain specified aspects of the person's care because the court finds that he or she is able to do **some**, but not all, of the tasks necessary to meet essential requirements for his or her physical health or safety, or make **some**, but not all, informed decisions about matters related to his or her care.

The court must make written findings of fact that support each grant of authority to the guardian. When deciding who shall be appointed plenary or limited guardian, the court will consider the best interests of the person with intellectual disability, including his preference. Frequently, the court will appoint the individual's closest relative, although it is not required to do so. The plenary or limited guardian must accept his or her appointment by the court in writing.

To protect the person with intellectual disability, the Probate Court may require the guardian to provide a probate bond in an amount determined by the court.

Visitation

Any parent of an adult with intellectual disability or a mental disability for whom a conservator of the person or a guardian has been appointed may file a motion for visitation with the Probate Court that has jurisdiction over the conservatorship or guardianship. After notice and hearing, the court may grant an order of visitation pursuant to the provisions of C.G.S. section 45a-598. The order must contain a schedule specifying the date(s), time(s) and place(s) of visits (including overnight visits, if permitted) and any other conditions that the judge believes to be in the best interest of the respondent.

What Are the Powers and Duties of a Plenary or Limited Guardian?

The Probate Court may give a guardian the power to assure and/or consent for:

- (1) Residence outside the natural family home;
- (2) Specifically designed educational, vocational, or behavioral programs;
- (3) The release of clinical records and photographs;
- (4) Routine, elective and emergency medical and dental care; and
- (5) Any other specific limited services necessary to develop or regain to the maximum extent possible the respondent's capacity to meet essential requirements.

A plenary guardian will be given **all** of the powers set forth above. A limited guardian will be given only those powers deemed necessary by the court. Plenary and limited guardians also have a duty to assure the care and comfort of the respondent within the

scope of their appointment and within the limitations of the resources available to the respondent, either through his or her own estate or by reason of private or public assistance. A guardian of a person with intellectual disability may also file a petition in the Probate Court to determine a respondent's competency to vote in a primary, referendum, or election.

What Are the Limitations on the Authority of a Plenary or Limited Guardian?

Except as permitted by statute, a plenary or limited guardian shall **not** have the power or authority:

- (1) To cause the respondent to be admitted to any institution for treatment of the mentally ill;
- (2) To cause the respondent to be admitted to any training school or other facility provided for the care and training of persons with intellectual disability if there is a conflict concerning such admission between the guardian and the respondent or next of kin;
- (3) To consent on behalf of the respondent to sterilization, psychosurgery, or to the termination of that person's parental rights;
- (4) To consent on behalf of the respondent to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment, unless it is (A) intended to preserve the life or prevent serious impairment of the respondent's physical health, (B) is intended to assist the respondent to regain his or her abilities and has been approved by the court, or (C) has been (i) approved by a recognized institutional review board, as defined by CFR 46, 21 CFR 50, and 21 CFR 56, as amended, and which is not a part of DDS, (ii) endorsed or supported by DDS, and (iii) approved for the respondent by the respondent's primary care physician;
- (5) To admit the respondent to any residential facility operated by an organization by whom such guardian is employed;
- (6) To prohibit the marriage or divorce of the respondent; and
- (7) To consent on behalf of the respondent to an abortion or removal of a body organ, unless it is necessary to preserve the life or prevent serious impairment of the physical or mental health of the respondent. Neither an abortion nor the removal of a body organ should ever be authorized without consulting the court.

What Is a Standby Guardian?

Whenever a court appoints a plenary or limited guardian, it may also appoint a standby guardian to act if the plenary or limited guardian dies, becomes incapable, or renounces his plenary or limited guardianship. The court must be informed **immediately** if the standby guardian assumes the guardianship and of the underlying circumstances. The standby guardian will be empowered to assume his duties immediately upon the death or declaration of the incompetence of the plenary or limited guardian.

How Does a Guardian Inform the Court about the Condition of the Respondent?

A plenary or limited guardian must submit an annual report to the court detailing the respondent's condition. Additional reports are required when ordered by the court, if the guardian resigns or is removed, and when the guardianship is terminated. A report must also be filed with the court if there is a significant change in the respondent's capacity to meet essential requirements for his or her physical health or safety. The reports are to be submitted on a form available at www.ctprobate.gov and at the Probate Court.

How Are Decisions Made about the Needs and Well-Being of the Respondent?

Working within the authority granted by the court, a plenary or limited guardian is the primary decision-maker with respect to the programs needed by the respondent and the policies and practices affecting the respondent's well-being. To the extent it is appropriate, the respondent may also join in the decision-making process. Decisions made about the respondent cannot conflict with the requirements of C.G.S. section 17a-238, which explains the rights of persons supervised by the Commissioner of DDS. In making any decisions, the plenary guardian or limited guardian must consult with the respondent and appropriate members of the respondent's family, where it is possible. A limited guardian shall be the primary decision-maker only with respect to the duties assigned by the court.

What Happens When a Person with Intellectual Disability Changes His or Her Residence?

If an adult with intellectual disability for whom a guardian has been appointed becomes a resident of a town in another probate district, the guardian or other interested party may apply for a transfer of that person's file to the new probate district.

How Often Is a Guardianship Reviewed?

At least every three years, the court must review each plenary or limited guardianship to determine the appropriateness of continuing, modifying or terminating the guardianship. Not later than 45 days after a request from the court, the guardian and either a DDS

professional or a three-member DDS assessment team must each submit a written report to the court about the respondent's condition. (Please note: The respondent or the court must make the request for the assessment team.) The DDS professional or the assessment team must personally observe or examine the respondent within the 45-day period preceding the date of submission of the report.

In the case of a respondent who is functioning within the severe or profound range of intellectual disability, as determined by DDS, the court shall receive and review written reports on the respondent's condition only from the guardian. However, the court may require a DDS professional or assessment team to submit a written report on the respondent's condition. As noted above, there is a 45-day time limit for submission of a report by a DDS professional or assessment team.

The court must forward copies of the reports to the attorney for the respondent. The respondent's attorney must visit with the respondent and inform the court in writing if a hearing is requested. The court, in its discretion, may hold a hearing on the respondent's status. In addition, if the guardian, the DDS professional or assessment team requests a hearing, the court must hold a hearing within 30 days of the request. No order expanding or reducing the powers or responsibilities of the guardian may be issued unless a hearing is held. If the respondent is unable to request or obtain an attorney, the court will appoint one. The Probate Court Administration Fund will pay the cost of the attorney's services if the respondent cannot afford to pay for counsel.

Can a Guardian Be Removed after Appointment?

Yes. The determining factor is the best interest of the respondent. Upon proper petition, notice and hearing, the court may remove the present guardian and appoint a new one.

How Are Conflicts Resolved?

Conflicts between the plenary guardian, limited guardian, conservator of the estate or person and/or temporary conservator are to be resolved by the Probate Court.

How Is a Temporary Limited Guardian Appointed?

Any interested party may file an Petition for Temporary Limited Guardianship alleging that an adult with intellectual disability is in need of elective surgical, medical or dental procedures or treatment involving the use of general anesthesia, and that by reason of the severity of his or her intellectual disability, he or she is unable to give informed consent to such treatment. The petition must include two certificates, one signed by a physician licensed to practice medicine or surgery in Connecticut and one signed by a licensed psychologist. The certificates must state that each doctor has examined the respondent within 30 days of the filing of the petition, and in their opinion:

- (1) The respondent's condition renders him or her incapable of giving informed consent to the procedure, **and**

- (2) Without such treatment, the respondent will suffer deterioration of his or her physical or mental health or serious discomfort.

Upon petition and notice to the respondent, the respondent's parents or spouse, if any, and to the Office of Protection and Advocacy, a hearing will be held promptly. If the court finds it necessary, a temporary limited guardian will then be appointed for the purpose of consenting to such procedure and/or treatment. In making the appointment, the court will give preference to the parent, next of kin or other person whom the court deems proper. If it is unable to find a suitable guardian, the court may appoint the Commissioner of DDS or the Commissioner's designee to serve in such capacity. The appointment shall be valid for no more than 60 days. A temporary limited guardian will be subject to the same limitations on authority that apply to limited guardians.

Is a Guardian Immune from Civil Liability?

Any plenary, limited or temporary limited guardian of an adult with intellectual disability who acts in good faith or under order of a Probate Court will be immune from civil liability, except in the case of gross negligence.

Can the Court Appoint a Conservator of the Estate for a Person with Intellectual Disability?

Yes. In addition to a guardian of the person, an adult with intellectual disability may require a conservator of the estate to oversee his or her financial affairs if he or she owns property and/or has assets and is unable to properly manage them. The conservator may be a person, municipal or state official, or a private or nonprofit corporation (with the exception of a hospital or nursing home). Although the court will consider the preference of the adult with intellectual disability when appointing a conservator, the final determining factor will be his or her best interest. For further information about conservatorship, please see the *Probate Court User Guide for Conservators*, available at www.ctprobate.gov and the local Probate Court.

STERILIZATION

Sterilization is defined in the Connecticut General Statutes as "a surgical or other medical procedure the purpose of which is to render an individual permanently incapable of procreating." Because of its serious consequences, sterilization in Connecticut is available only to persons who have attained the age of 18 and have given written informed consent. Our state laws provide many safeguards designed to protect the interests of those persons who may not be able to give informed consent. Such persons include those with intellectual disability and those under conservatorship or guardianship.

What Is Informed Consent?

The Connecticut General Statutes are clear about what constitutes informed consent. For the purposes of sterilization, "informed consent" means consent that is:

- (1) Based upon an understanding of the nature and consequences of sterilization;
- (2) Given by a person competent to make such a decision; and
- (3) Wholly voluntary and free from coercion.

If a physician has reason to believe that a person age 18 or over is unable to give informed consent, or if the person resides in a state institution, a sterilization procedure may not be performed unless the Probate Court has determined that the person is able to give informed consent and has done so. If the court finds that the individual has not given such consent or is under guardianship or conservatorship, the court may authorize sterilization only if it finds that it is in the person's best interest.

How Does the Probate Court Determine If Sterilization Is in a Person's Best Interest?

At a hearing held after proper petition and notice, the court will consider medical, social, educational and psychological evidence to determine if the procedure will be in the person's best interest. Such a determination must include all of the following factors:

- (1) Whether less drastic alternative contraceptive methods have proved workable or inapplicable;
- (2) Whether the individual is physiologically sexually mature;
- (3) Any evidence of infertility;
- (4) Whether the individual has the capability and a reasonable opportunity for sexual activity;
- (5) The individual's inability to understand reproduction or contraception and the likelihood of permanence of that inability;
- (6) The physical or emotional inability to care for a child;
- (7) Whether the proponents of the sterilization are seeking the sterilization in good faith such that their primary concern is for the best interests of the respondent rather than for their convenience or that of the public; and
- (8) If, in the case of females, procreation would endanger the life or severely impair the health of the individual.

Refusal to undergo sterilization is allowed despite the court's findings, if the court determines that an individual fully understands the nature and consequences of the refusal.

A hysterectomy may not be performed simply for the purpose of sterilization. If, however, a surgical procedure that **may result** in sterilization is medically indicated, it may be performed.

Opportunity to Appeal Decree Permitting Sterilization

As required by law, the Probate Court's decree permitting sterilization shall be stayed for a period of not less than 10 days from the date of the decree in order to give the respondent the opportunity to file an appeal. If an appeal is not filed within the time period, the stay shall be lifted, and the decree will take effect. However, if an appeal is filed within the time period, the stay of the decree will remain in effect pending the outcome of the appeal. Please note that a decree permitting sterilization cannot be stayed if the court finds that the respondent (1) is 18 years of age or older, (2) is able to give informed consent to a sterilization procedure, and (3) has given informed consent, in writing, to the sterilization procedure.

INVOLUNTARY PLACEMENT

Under What Circumstances Can a Person with Intellectual Disability Be Involuntarily Placed in a State Facility by the Department of Developmental Services?

The Probate Court has the power to place a person with intellectual disability with DDS provided that certain conditions are met. The court must find by clear and convincing evidence that the person has intellectual disability AND:

- (1) Is unable to provide himself with at least one of the following: education, self-development, care for his personal and mental health needs, food, shelter, clothing and/or protection from harm;
- (2) Has no family or guardian to care for him, or his family or guardian can no longer provide adequate care;
- (3) Is unable to obtain essential services in the absence of placement; and
- (4) Is unwilling to submit to placement with DDS or he (or his next of kin) has opposed voluntary admission sought by a guardian.

The placement must be in an appropriate setting that meets the developmental needs of the person with intellectual disability in the least restrictive environment available or that can be created within the department's existing resources.

PROBATE APPEALS

Any person aggrieved by an order, denial or decree of the Probate Court may appeal to the Superior Court. In general, appeals must be taken within 30 days from the date of the order, denial or decree.

CONCLUSION

Safeguarding the rights of persons with intellectual disability is of paramount importance when guardianship, sterilization or involuntary placement is contemplated. An adult person with intellectual disability, while of the age of full legal rights, may be unable to act for himself or herself in many circumstances. A guardian, stepping in to act on behalf of a person with intellectual disability, will undertake serious responsibilities and should always seek competent professional advice when making decisions that will affect the person with intellectual disability.

PROBATE COURT FORMS

Guardianship of Persons with Intellectual Disability

Petition/Guardianship of Person with Intellectual Disability	PC-700
Petition/Placement of Person with Intellectual Disability	PC-701
Petition/Sterilization of Adult	PC-702
Order of Notice/Guardianship of Person with Intellectual Disability	PC-720
Order of Notice/Sterilization of Adult	PC-721
Order of Notice of Hearing and Return/Appointment of Guardian of the Person with Intellectual Disability/Review Hearing	PC-722
Citation & Ret./Guardianship of Person with Intellectual Disability	PC-730
Notice of Hearing/Placement of Person with Intellectual Disability	PC-731
Citation & Return/Sterilization of Adult	PC-732
Notice of Hearing/Appointment of Guardian of Person with Intellectual Disability/Review Hearing	PC-733
Decree/App't of Guardian of Person with Intellectual Disability	PC-760
Decree/Placement of Person with Intellectual Disability	PC-761
Decree/Sterilization of Adult	PC-762
Decree/Review/App't of Guardian of Person with Intellectual Disability (For Use Only When A Hearing Has Been Held)	PC-763
Order/Review/App't of Guardian of Person with Intellectual Disability (For Use Only When No Hearing Has Been Held)	PC-763A
Assessment Team Evaluation: Guardianship of Person with Intellectual Disability	PC-770
DDS Professional or Assessment Team Evaluation: Guardianship of Person with Intellectual Disability/Review Hearing	PC-770A
Guardian's Report/ Guardianship of Person with Intellectual Disability	PC-771
Psychologist's Report/Placement of Person with Intellectual Disability	PC-772
Panel Evaluation/Sterilization of Adult	PC-773

These forms are available online at the Probate Court website, www.ctprobate.gov. (Click on "Probate Court Forms") Forms are also available at the Probate Court.

Note: The Application/Temporary Limited Guardian, CM-11, must be reproduced from the *Probate Clerk's Manual* and must be requested from the court clerk.